Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No.1277 of 2001
(Old No. 1074 of 1987)

Balwant Singh Parihar
S/o Sri Dharam Singh
R/o Village Gangarh
P.S. Bageshwar
District Almora .....Appellant

Versus

State .....Respondent

Shri R.P. Nautiyal, Advocate for the appellant.
Mr. D.K. Sharma, learned Government Advocate for the State.

Coram: Hon'ble B.C. Kandpal, J.
Hon'ble Prafulla C. Pant, J.

Per: Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (herein after referred as Cr.P.C.) is directed against the judgment and order dated 09.04.1987, passed in Sessions Trial No. 24 of 1986, whereby Sessions Judge, Almora has convicted the appellant Balwant Singh under section 302 of Indian Penal Code, 1860 (herein after referred as I.P.C.) and sentenced him to imprisonment for life.

2. We heard learned counsel for the parties and perused the entire record.

3. Prosecution story, in brief, is that informant Devendra Singh Nagarkoti (P.W. 1) is resident of village Salam, Patti Talla Katyur and is engaged in a business of woollen and readymade garments in Katyur market. On 13.03.1986, he was beaten by appellant Balwant Singh of his village on which he reported the matter to the police. About one month thereafter, on 15.04.1986 P.W.1 Devendra Singh along with Kamarjeet Singh (deceased) was going to his village Salam, and both of them were travelling in a bus from Bageshwar. At about 11:30 A.M., the bus stopped at village Most-gaon and both of them got down there. When accused Balwant Singh saw them he exclaimed that they have come to kill him. He armed with a lathi attempted first to beat informant Devendra Singh Nagarkoti but he got hid in a nearby bush and thereafter Balwant Singh started beating Kamarjeet Singh with lathi. Meanwhile, two police constables namely Hem Singh (P.W. 3) and Manohar Dutt heard cries of Kamarjeet and came on the spot, challenging the accused Balwant Singh. On this, Balwant Singh fled away and constables made attempt to chase him but could not apprehend. After sometime people started collecting at the spot but by then Kamarjeet had already died. Devendra Singh Nagarkoti, leaving the dead body in the guard of police constables, went to police station Bageshwar and lodged First Information Report (Ext. A-1) at about 3:15 P.M. on 15.04.1986. Head Constable Clerk Gopal Ram (P.W. 4) at the police station, prepared check report (Ext. A-3) of the First

Information Report and also made necessary entry in the general dairy, extract of which is Ext. A-4. Shri D.P. Singh (P.W. 5), the Investigating Officer, investigated the crime. He went to spot and got prepared the inquest report (Ext. A-5), police form No. 13 (Ext. A-6), police form No. 33 (Ext. A-7), police form No. 238 (Ext. A-8), sketch of the dead body (Ext. A-9), and thereafter sent the dead body for post mortem examination through constables, which included constable Madhaw Ram. The Investigating Officer collected the simple soil and blood stained from the spot and prepared memo (Ext. A-10). He also prepared site plan (Ext. A-11). On 16.04.1986 at about 11:15 A.M., P.W. 2 Dr. N.D. Punetha conducted the autopsy on the dead body of Kamarjeet and prepared post mortem examination report (Ext. A-2). He opined that cause of death of the deceased was shock and haemorrhage, as a result of multiple injuries found on the body of the deceased. After arresting the accused, the police got recovered lathi (rod) and the stone, which were used by the appellant in commission of the crime and prepared recovery memo (Ext. A-12 and Ext. A-13). After recording the statements of the witnesses and completion of the investigating, charge sheet (Ext. A-16) was filed by the Investigating Officer before the Magistrate concerned.

4. The Magistrate, on receipt of the charge sheet, registered the same and after giving necessary copies to the accused, as required under Section 207 of Code of

Criminal Procedure, 1973, committed the case to the Court of Sessions, for trial.

5. Learned Sessions Judge after hearing the prosecution and the defence, framed charge of offence, punishable under Section 302 I.P.C. against the accused Balwant Singh, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Devendra Singh Nagarkoti (Informant and eye-witness), P.W. 2 Dr. N.D. Punetha, who conducted the post mortem examination on the dead body of deceased Kamarjeet, P.W. 3 Constable Hem Singh (eye-witness), P.W. 4 Constable Clerk Gopal Ram, who prepared check report of the First Information Report and made entry in the general dairy and P.W. 5 Shri D.P. Singh, the Investigating Officer. Apart from the above five witnesses, affidavits of constable Manwar Singh, who deposited the recovered articles in the Malkhana, and that of constable Madhaw Ram, who took the dead body to the Medical Officer for post mortem examination, were filed in support of the prosecution. All the documentary and oral evidence were put to the accused Balwant Singh under Section 313 of Cr.P.C. in reply to which he alleged that the evidence adduced by the prosecution is false and he further said that he had falsely been implicated in the crime due to the enmity. No evidence were adduced in defence by the accused. After hearing the prosecution and the defence, the trial court found accused Balwant Singh guilty of offence punishable under Section 302 I.P.C. After hearing the

convict on sentence, he was sentenced to imprisonment for life. Aggrieved by said judgment and order dated 09.04.1987, this appeal was preferred before the Allahabad High Court by the convict in the year 1987, which was received by this Court by transfer under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

6. Before further discussions, it is pertinent to mention here the ante mortem injuries found on the person of the deceased, at the time of autopsy. Ext. A-2 (Post Mortem Examination Report) read with the statement of Dr. N.D. Punetha (P.W. 2), discloses following ante mortem injuries on the person of the deceased:-

1. ***Lacerated wound 3 ½ cm X 2cm X bone deep, present on the left side of the parietal region of the head. 10cm above the left ear.***
2. ***Lacerated wound 6cm X 2cm X bone deep, present on the right side of the parietal region of the head.***
3. ***Abrasion multiple 4cm X 2cm, 4cm X 2 $^{1}/_{2}$cm, 2cm X 2cm, present on the right side of the neck in an area of 10cm X 6cm.***
4. ***Contusion 6cm X 2cm present on the right side of the delta region.***

5. ***contusion 6cm X 3cm, present on the right side of the arm anterior aspect in the middle.***
6. ***Lacerated wound 2cm X 1cm X muscle deep, present on the right side of the arm, 3cm below the injury No.6.***
7. ***Lacerated wound 2c, X 1 ½ cm X muscle deep, present on the right side of the elbow joint.***
8. ***Contusion 2 ½ cm X 2cm, present on the right side of the cubital fossa.***
9. ***Lacerated wound 3cm X 2 ½ cm X muscle deep, present on the right side of the forearm exterior surface.***
10. ***Compound fracture, present under injury No. 9.***
11. ***Contusion 3cm X 2 ½ cm present on the right side of the hand.***
12. ***lacerated wound 2cm X 2cm X muscle deep, present on the right side of the index finger.***
13. ***Lacerated wound 2cm X 2cm, present on the right side of the middle finger.***
14. ***Abrasion 6cm X 3cm present on the right side of the wrist joint, inner aspect.***

15. ***Abrasion 3cm X 2 ½ cm, present on the right side of the thigh.***
16. ***Contusion 15cm X 6cm, present on the right side of the thigh anterior aspect in lower half anteriorly.***
17. ***Abrasion 3cm X 2 ½ cm, present on the right side of the knee joint anterior aspect.***
18. ***Lacerated wound 7cm X 2cm, present on the right side of the leg in the lower half.***
19. ***Bone coming out of thigh from injury No. 18.***
20. ***Lacerated wound 15cm X 2cm X bone deep, present on the left side of the leg lower half.***
21. ***Tibia is coming out through injury No. 20.***
22. ***Abrasion 6cm X 1cm, present on the left side of the knee joint anterior aspect.***
23. ***Abrasion 7cm X 2cm, present on the left side of the chest below nipple.***
24. ***Contusion 3cm X 2cm, present on the left side of the shoulder joint.***
25. ***Contusion 4cm X 2cm on the left side of the hand.***

26. ***Contusion 6cm X 3cm, present on the left side of the forearm inner aspect in the middle.***
27. ***Contusion 6cm X 3cm, present on the right side of the chest in mid axillary line at the level of 7^{th} 8^{th} 9^{th} and 10^{th} rib.***

On internal examination, the Medical Officer found that food material was found present in the stomach with smell of alcohol. The liver was found lacerated underneath the injury No. 27. The cause of death, according to the Medical Officer was shock and haemorrhage, as a result of multiple ante mortem injuries, mentioned above.

7. P.W. 2 Dr. N.D. Punetha, stated in his cross examination that the ante mortem injuries found on the person of the deceased could also get caused due to stumbling again and again over the hilly area. He further did not rule out the possibility that a drunken person, if falls down in such an area, the above kind of injuries can get caused by such fall and stumbling. P.W. 2 Dr. N.D. Punetha has further stated in his cross examination that before death, the deceased must have taken the liquor.

8. The question now is then why the complainant named accused in the First Information Report. P.W. 1 Devendra Singh, in the opening sentence of cross examination says that there was enmity between him and the accused Balwant Singh.

9. The prosecution got only two eye-witnesses examined in this case, namely P.W. 1 Devendra Singh Nagarkoti (informant) and P.W. 3 Constable Hem Singh. According to P.W. 1 Devendra Singh, he came with deceased from Bageshwar in a bus to Katyur bazaar on his way to his village on the date of the incident. The witness further states that as soon as they got down in Most-gaon, accused Balwant met them and apprehended that they had come to kill him. P.W. 1 Devendra Singh Nagarkoti further states that accused Balwant Singh gave blow of lathi at Kamarjeet and meanwhile, he (Devendra Singh) got hid himself behind a bush. The witness further states that Balwant Singh went on giving blows on the person of the deceased with lathies (rods) and stones. It is difficult to believe that a single person will hold more than one lathi and simultaneously more than one stone. P.W. 1 Devendra Singh further states that on hearing the cries of Kamarjeet, two police constables, came and they also witnesses the incident, chased the accused but could not apprehend him. In cross examination, this witness (Devendra Singh) admits that Kamarjeet (deceased) was a well known criminal but he adds that he was good to him. P.W. 1 Devendra Singh further states that when the police men chased accused, they were unarmed. He further states that before the policemen reached the spot, Balwant Singh had already fled away about 10-15 minutes before it. If this part of the statement of P.W. 1 Devendra Singh, in cross

examination in believed, the policemen could not have seen the occurrence because they reached about 10 minutes after the accused fled from the scene.

10. P.W. 3 Constable Hem Singh in his cross examination, corroborates that prosecution story, stating the he and Constable Manohar Dutt, heard cries of deceased and they went to the spot and saw that accused Balwant Singh is beating the deceased. The witness further states that he along with his colleague chased the accused but could not apprehend. In cross examination, this witness also admits that the deceased was a criminal and a history sheeter. Presence of this witness at the time of the incident when accused Balwant Singh allegedly gave beating to the deceased, appears to be doubtful. P.W. 1 Devendra Singh, has stated that 10-15 minutes after fleeing of Balwant Singh, the policemen reached at the spot and made attempts to chase and apprehend the accused. If constable Hem Singh reached after the accused left the scene of occurrence, it cannot be said that P.W. 3 Hem Singh had seen accused committing crime. Apart from this, there are material contradiction in the statement of P.W. 1 Devendra Singh and P.W. 3 Hem Singh P.W. 1 Devendra Singh says that the policemen were unarmed at the time when they chased the accused. On the other hand P.W. 3 constable Hem Singh states that he and his colleague Manohar Dutt were armed with rifles and were in possession of the cartridges at the time they chased the accused. The prosecution is unable to

explain this material contradiction on record. Not only this, on behalf of the appellant, it is also contended that had this policemen Hem Singh been in the village, there should have been some entry in the general dairy at the police station, for his movement to the village of Guman Singh in whose security, he alleges to be on duty.

11. Though where there are eye witnesses of the incident, prosecution is not required to show the motive for commission of crime on the part of the accused but in the circumstances, as narrated above, non disclosure of motive on the part of the accused Balwant Singh to kill Kamarjeet, further strengthens the doubt in the prosecution story,

12. The Medical Officer (P.W. 2 Dr. N.D. Punetha) found that there were alcohol contents in the stomach of the deceased, found at the time of autopsy, and he in the cross examination does not rule out the possibility that a drunken person, if fallen in a hilly area could have sustained the injuries by stumbling. This creates reasonable doubt, as to the manner in which the prosecution has alleged the crime to have been committed. There is yet another fact, which creates reasonable doubt, as to the truthfulness of the prosecution story. The deceased was a history sheeter, as admitted in the cross examination by P.W. 1 Devendra Singh and P.W. 3 Hem Singh, and when such person accompanied with his associate that is informant

(Devendra Singh), it is hard to believe that the accused single handed without being armed with deadly weapon would dare to kill him and that too without any motive.

13. For the reasons, as discusses above, we are of the view that in the above circumstances, it cannot be said that the charge of murder of Kamarjeet is proved against the accused Balwant Singh, beyond reasonable doubt. Therefore, the appeal deserves to be allowed. The same is allowed. The judgment and order, passed by the learned Sessions Judge, Almora, is set aside. The appellant Balwant Singh Parihar, giving him benefit of reasonable doubt, is acquitted of the charge of offence punishable under Section 302 of I.P.C. The appellant, if in jail and if not wanted in connection with any other crime, be released forthwith.

(Prafulla C. Pant, J.) **(B.C. Kandpal, J.)**

Dt: 28.08.2006
Sweta